

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8646 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KALUBHAI GODADBHAI

Versus

DIST SUPDT OF POLICE

Appearance:

MR ANANT S DAVE for Petitioners

MR PREMAL JOSHI, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/04/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioners, Police Constables/Head Constables, seventeen in number, have challenged the orders dated 23.11.1990 and 3.12.1990 (Annexure "A" to the petition) passed by the District Superintendent of Police, Mehsana for evicting the petitioners from the Government quarters and calling upon them to pay the market rent. Both these orders were passed on the ground that the petitioners were transferred from Kalol town and

still they had not vacated the quarters allotted to them at Kalol.

2. The learned counsel for the petitioners submits that even after their transfer, the petitioners were not allotted any Government quarters at the place/s to which they were transferred and that the petitioners had to ensure that the education of their children was not adversely affected. The petitioners were also not getting any HRA and that, therefore, the petitioners were not required to be evicted.

3. Mr Dave has further submitted that the impugned orders were passed without giving the petitioners an opportunity of being heard and that if the impugned orders are permitted to be implemented, the petitioners will be required to pay a major part of their salary by way of market rent.

4. In the facts and circumstances of the case, more particularly in view of the fact that the petitioners were not given any opportunity of being heard before the impugned orders were passed, on this short ground alone, the petition deserves to be allowed.

5. The petitioners have also raised a contention that the petitioners cannot be evicted without following the procedure prescribed under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. It is not necessary to examine this contention at this stage since it will be open to the petitioners to raise all the contentions available to them if and when the authorities decide to issue any fresh show cause notice.

6. Subject to the aforesaid observations, the petition is allowed. The impugned communications dated 28.11.1990 and 3.12.1990 (Annexure "A" to the petition) are quashed and set aside without prejudice to the rights of the respondent authorities to pass appropriate orders in accordance with law and after taking into account the factual position as prevailing now.

Rule is made absolute with no order as to costs.

April 25, 2000 (M.S. Shah, J.)
sundar/-